

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
CATHRYN CAMPBELL
MCDERMOTT WILL & EMERY LLP
4370 LA JOLLA VILLAGE DRIVE, SUITE 700
SAN DIEGO, CA 92122

PCT

REC'D 12 SEP 2005

WIPO

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 70085-025		Date of mailing (day/month/year) 08 SEP 2005
FOR FURTHER ACTION See paragraph 2 below		
International application No. PCT/US04/27901	International filing date (day/month/year) 27 August 2004 (27.08.2004)	Priority date (day/month/year) 28 August 2003 (28.08.2003)
International Patent Classification (IPC) or both national classification and IPC IPC(7): A01N 55/02 and US Cl.: 514/495		
Applicant PURE BIOSCIENCE, INC.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.
For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. 571-273-8300

Authorized officer

Casey Hagopian

Telephone No. 571-272-6097

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/27901

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/27901

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>1-17</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-17</u>	NO
Industrial applicability (IA)	Claims <u>1-17</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-17 lack an inventive step under PCT Article 33(3) as being obvious over Arata (USPN 6,197,814 B1). Arata teaches compositions comprising silver dihydrogen citrate and citric acid for various settings including water systems (i.e. cooling towers, swimming pools, spas, etc.), food, and beverages. Arata also teaches medically pure water, alcohols, and detergents, as well as, amounts of each of the ingredients. Arata does not teach an anhydrous version of the composition, however it is the position of the examiner that freeze-drying or lyophilizing the composition taught by Arata would lend unexpected results. Lyophilization is a well-known and commonly used method that has several advantages including increasing the shelf life and stability, modulating the concentration, and altering the buffer conditions. Furthermore, the prior art teaches the identical effects that the claimed composition aims for. Thus, it would have been obvious for one skilled in the art to lyophilize and subsequently reconstitute the Arata composition as suggested by the prior art.

Claims 1-17 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.